

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 97-02
DATE ACTIVATED: September 8, 1998

STAFF MEMBER: Jamila I. Wyatt

SOURCE:

INTERNALLY GENERATED

RESPONDENTS:

Buchanan Compliance Fund '92 and Angela M. "Bay"
Buchanan, as treasurer
Buchanan Compliance Fund '96 and Angela M. "Bay"
Buchanan, as treasurer
Helen O'Donnell

RELEVANT STATUTES/
REGULATIONS:

2 U.S.C. § 441a(a)(1)(A) and (f)
26 U.S.C. § 9038(a)
11 C.F.R. § 100.7
11 C.F.R. § 102.9(e)
11 C.F.R. § 114.1(a)(1)
11 C.F.R. § 9003.3(a) and (b)(6)
11 C.F.R. § 9034.4(b)(4)
11 C.F.R. § 9038.2(a)(4)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated from information obtained in the course of conducting the audit of 1996 Buchanan for President, Inc. ("the Primary Committee") undertaken in accordance with 26 U.S.C. § 9038(a). Based on information obtained during audit fieldwork, the Audit staff discovered the existence of the Buchanan Compliance Fund '92 ("92 Fund") and the Buchanan

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Compliance Fund '96 ("96 Fund"). This matter was referred to the Office of General Counsel from the Audit Division. The Audit Division referral materials are attached. Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). A political committee is prohibited from knowingly accepting contributions in excess of the \$1,000 limit. 2 U.S.C. § 441a(f). The Commission's regulations state that the term contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 11 C.F.R. § 100.7. However, the Commission's regulations provide that any funds received or expended by a publicly-financed primary committee to pay civil or criminal penalties are not "contributions" or "expenditures" pursuant to the Federal Election Campaign Act (the "FECA"). 11 C.F.R. § 9034.4(b)(4).²

The Commission's regulations state that repayments of public funds may only be made from the following sources: personal funds of the candidate, contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the FECA. 11 C.F.R. § 9038.2(a)(4). General Election Legal and Accounting

² The funds received for the purpose of paying civil and criminal penalties are subject to the FECA prohibitions. 11 C.F.R. § 9034.4(b)(4).

Compliance Funds may be established by a committee for legal and accounting compliance costs incurred for the general election. 11 C.F.R. § 9003.3.

B. Compliance Funds

During the audit of the Primary Committee, the Audit staff became aware of the existence of two Buchanan accounts: Buchanan Compliance Fund '92 and Buchanan Compliance Fund '96. While reviewing the Primary Committee's checks that were used for refunding excessive contributions, the Audit staff noted that certain checks were redesignated to the '92 Fund. These redesignated checks had the phrase "Payable to Buchanan Compliance Fund" stamped or typed on the back. A total of \$67,320 in refund checks were endorsed by the payees and then deposited into the '92 Fund account from October 10, 1995 through September 30, 1996. According to the Primary Committee's documentation, there was a letter accompanying the Primary Committee's refund checks that was sent to the contributors asking the contributors to endorse the refund check to the compliance fund.³ Attachment 2 and 3. One document entitled *Buchanan Compliance Fund Fact Sheet* explains that the "Compliance Fund" was established "for the purpose of paying expenses relating to the Federal Election Commission's audit of the 1992 Buchanan for President Committee." Attachment 4. The document lists the relevant expenses to include "fines and penalties [assessed] by the FEC; legal and consulting expenses pertaining to the audit [of the 1992 Buchanan for President Committee]; legal expenses related to an ongoing court case in Rhode Island; and general office expenses." Attachment 4.

³ The letter asked that checks be endorsed to "the Buchanan Compliance Fund" and did not specify the '92 Fund or the '96 Fund.

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The Audit staff reviewed disclosure reports filed by the '92 Fund.⁴ During the period of April 1, 1993 through September 30, 1997, the '92 Fund reported total receipts of \$170,199 and total disbursements of \$148,115. Receipts through September 30, 1997 consisted of \$167,593 in contributions from individuals and a \$2,606 transfer from Buchanan for President '92. Reported disbursements⁵ consisted of payments for legal fees totaling \$78,675, administrative expenses totaling \$19,707 and two payments to Patton Boggs, PC totaling \$42,300 which the Primary Committee describes as "FEC Penalty" (\$20,000) and "FEC Repayment" (\$22,300).⁶

The Office of General Counsel reviewed the disclosure reports for the '96 Fund. During the period of October 1997 through December 1998, the '96 Fund reported total receipts of \$78,367 and total disbursements of \$76,373. This Office found that on June 23, 1998 and July 20, 1999, the '96 Fund paid \$10,000 and \$15,000 respectively to Steptoe & Johnson for legal services.

⁴ A Statement of Organization was not filed by the '92 Fund or the '96 Fund. An initial disclosure report was filed on July 20, 1993, covering the period April 1, 1993 through June 30, 1993. The name on the report is the Buchanan Compliance Fund. Beginning with the report for the period October 1, 1995 through December 31, 1995, the committee name on the reports changed from Buchanan Compliance Fund to Buchanan Compliance Fund '92. The 1998 year end report for the Buchanan Compliance Fund '92 evidences a transfer of its entire balance to the Buchanan Compliance Fund '96, leaving the '92 Fund with \$0 cash-on-hand.

⁵ These disbursements were noted on disclosure reports covering the period of April 1996 through October 1996.

⁶ On August 1, 1995, the Commission made a final determination that the 1992 Buchanan for President Committee must repay \$293,314 to the United States Treasury. On October 12, 1995, the Commission granted the Primary Committee's request to stay the Commission's repayment determination pending the Primary Committee's appeal of the final repayment determination filed in the United States Court of Appeals for the District of Columbia Circuit. On March 19, 1996, the Commission approved a settlement offer made by the Primary Committee. Under the terms of the settlement agreement, the Primary Committee was required to remit full payment to the United States Treasury by September 19, 1996 and file a stipulation with the Court of Appeals to dismiss the petition for review. On June 10, 1996, the Federal Election Commission received a check in the amount of \$22,199 from Patton Boggs, L.L.P. representing the Primary Committee's final payment on the \$293,314 repayment due to the United States Treasury.

C. Discussion

Since the '92 Fund and the '96 Fund refer to themselves as compliance funds there is a threshold issue of whether these account should be viewed as a general election legal and accounting compliance funds in accordance with 11 C.F.R. § 9003.3(a) or primary election accounts for civil and criminal penalties pursuant to 11 C.F.R. § 9034.4(b)(4). Patrick Buchanan was not a candidate in the 1992 or the 1996 general election and there is no indication that he intended to establish a legal and accounting compliance fund for either general election.⁷ Therefore, the Office of General Counsel believes that the accounts should be considered civil and criminal penalty accounts pursuant to 11 C.F.R. § 9034.4(b)(4).⁸

The Primary Committee has provided documentation that states unequivocally that the purpose of the '92 Fund was, in fact, to cover the cost of repayment obligations and various legal fees. The disclosure reports for the '92 Fund show that the '92 Fund made disbursements for a repayment obligation as well as legal fees totaling \$120,975.⁹ Disclosure reports also indicate that the '96 Fund made disbursements for legal fees totaling \$25,000. Section 9034.4(b)(4) of the Commission's regulations was promulgated to enable publicly-financed presidential

⁷ If the '92 Fund is considered a general and accounting compliance fund, the account should have refunded the contributions because Mr. Buchanan was not a candidate in the general election. See 11 C.F.R. § 102.9(e).

⁸ Although Pete Wilson, Phil Gramm, Lamar Alexander, and Richard Lugar did not participate in the 1996 general election, these primary candidates established both general election legal and accounting compliance funds and primary election civil and criminal penalty accounts. A major source of financing for these primary election civil and criminal penalty accounts was the redesignation of contributions from the general election legal and accounting compliance fund after the candidates were no longer eligible to receive public funds for the purpose of seeking the nomination.

⁹ Repayment obligations are not a civil or criminal penalty in that they do not involve violations of the law. *Reagan Bush Committee v. Federal Election Commission*, 525 F. Supp. 1330, 1337 (D.D.C. 1981) (repayment obligations are "analogous to determinations that income tax is owed: unless it is not paid or there is a willful attempt to evade the payment, there is no violation of law."); accord *Kennedy for President Committee v. Federal Election Commission*, 734 F.2d 1558, 1561 (D.C. Cir. 1984).

committees to pay civil and criminal penalties with funds that are not subject to the contribution and expenditure limitations of the FECA. See Explanation and Justification for 11 C.F.R.

§ 9034.4(e), 44 Fed. Reg. 20340 (April 4, 1979).¹⁰ There is no indication that the funds accepted for the purpose of paying civil and criminal penalties could be used for any other purpose.¹¹

Since the '92 Fund and the '96 Fund did not limit their disbursements to pay civil and criminal penalties, the donations to these accounts are contributions within the meaning of the FECA.

Therefore, the funds deposited into the accounts were subject to the contribution limitations set forth in the FECA. See 11 C.F.R. § 9034.4(b)(4).

According to documentation detailing the amount of each refund that was redesignated to the '92 Fund, three individuals made contributions in excess of the \$1,000 individual contribution limitation. Mary Rohe, Nellie O'Connor, and Helen O'Donnell made contributions that were redesignated to the '92 Fund totaling \$1,250, \$1,350, and \$2,300, respectively. Accordingly, the Office of General Counsel further recommends that the Commission find reason to believe that the '92 Fund violated 2 U.S.C. § 441a(f) by accepting \$1,900 in contributions in excess of the \$1,000 limitation. This Office further recommends that the Commission find reason to believe that Helen O'Donnell violated 2 U.S.C. § 441a(a)(1)(A) by

¹⁰ The Commission's regulations state that civil and criminal penalties paid pursuant to the FECA are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. See 11 C.F.R. § 9034.4(b)(4).

¹¹ On October 29, 1996, the Commission considered a memorandum submitted jointly by the Audit Division and the Office of General Counsel concerning General Election Legal and Accounting Compliance Funds, and fines and penalty accounts established by 1996 Presidential candidates. The Commission determined that funds received for the purpose of paying civil and criminal penalties cannot be used to pay non-overhead expenses, repayment obligations, or legal fees. See Agenda Document No. X96-58.

making a contribution in excess of the \$1,000 limitation. The Office of General Counsel reviewed disclosure reports submitted by the '96 Fund and found no evidence that the '96 Fund accepted contributions in excess of the limitation. Since there is no indication that any of the '96 Funds receipts were excessive contributions, the Office of General Counsel recommends that the Commission find no reason to believe that the '96 Fund violated 2 U.S.C. § 441a(f).

The Office of General Counsel recommends that the Commission take no further action with respect to the '92 Fund's receipt of excessive contributions. The amount of money that results in excessive contributions to the '92 Fund is relatively low; \$1,900. In order to be consistent with the proper ordering of the Commission's resources and priorities, this Office believes that the Commission should take no further action in this matter.

III. RECOMMENDATIONS

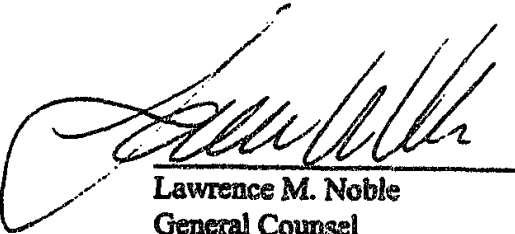
1. Open a MUR.
2. Find reason to believe that Buchanan Compliance Fund '92 and Angela Buchanan, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.
3. Find reason to believe that Helen O' Donnell violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.
4. Find no reason to believe that Buchanan Compliance Fund '96 and Angela Buchanan, as treasurer, violated 2 U.S.C. § 441a(f).

5. Approve the appropriate letters.

6. Close the file.

Date

7/27/99


Lawrence M. Noble
General Counsel

Attachments:

1. Audit Referral 97-02 dated November 21, 1997
2. Buchanan for President form letter for individual contributions
3. Buchanan for President form letter for cash contributions
4. Buchanan Compliance Fund Fact Sheet
5. Schedule of Contribution Refund Checks made payable to or endorsed to the Buchanan Compliance Fund



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: August 2, 1999

SUBJECT: Audit Referral #97-02 - First General Counsel's Report
dated July 27, 1999.

The above-captioned document was circulated to the Commission
on Wednesday, July 28, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, August 17, 1999.

Please notify us who will represent your Division before the Commission on this
matter.

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